Supreme Court, U. S.
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IN THE
Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-288

WALTER WENCKE, et al.,

Petitioners,

v.

SECURITIES & EXCHANGE COMMISSION,

Respondent.

SUPPLEMENTAL APPENDIX TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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Dated: September 13, 1978

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Pursuant to a telephone request of the Clerk of the Supreme Court for The Findings and Judgment below the Petitioners present the following additional items to be added to the Appendix:

1) Findings of Fact and Conclusion of Law of United States District Court, *S.E.C. v. Walter Wencke, et al.* 2

2) Permanent Injunction, Appointment of Special Master and other relief of United States District Court. *S.E.C. v. Walter Wencke, et al.* 17

3) Findings of Fact, Conclusions of Law and Order *in re: Sun Fruit Ltd.* of the District Court of the Eighth Judicial District of Nevada in and for the County of Clark. 40

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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, v. WALTER WENCKE, et al. Defendants.	Civil Action No. 76-0783-GT FINDINGS OF FACT AND CONCLUSIONS OF LAW

FINDINGS OF FACT

1. On July 22, 1976 the United States Securities & Exchange Commission ("Commission") commenced this action by filing the Complaint in this Court.

2. The Complaint prayed for, *inter alia*, permanent injunctions from further violations of various anti-fraud, periodic reporting, and proxy provisions of the federal securities laws; disgorgement of misappropriated assets; appointment of receivers; an order requiring that certain periodic reports be accurately prepared and filed; and any other relief this Court may deem necessary and proper.

3. Three defendants – Richard Mets, John Dees, and Paul Potter – acknowledged service of the summons and Complaint upon them and stipulated to the entry of final judgments against them. Said judgments have heretofore been entered. Unless otherwise expressly indicated, references hereinafter to "defendants" shall not include Mets, Dees and Potter.

4. On July 28, 1976, Murry Luftig, Esq., a member of the bar of the State of California, was authorized to and did accept service of the Complaint on behalf of the following defendants:

Walter Wencke
Cathryn Wencke
Time-Lenders, Inc.
Santa Fe Financial Corporation
San Diego Environmental Charitable Trust
Zippe, Ltd.
Hawksfoot, Ltd.
Rinn Corp.
17th Corp.
Sundowner Corp.
Royal Executive Inn–Sunnyvale, Inc.
Rinn Motor Hotels, Inc.
Rinns of Utah, Inc.

Karpos, Inc.
Phyo, Inc.
Irreantum, Inc.
The Grape Institute, Inc.
Butt Trust
Sailor Trust
The Grape Institute Trust
Business Consultants, Inc.
The Barbara Corporation
Familia 4, Ltd.

5. Subsequently, Kevin Midlam, Esq. became counsel of record for certain of the defendants named in finding number four.

6. On July 28, 1976, defendant Walter Wencke ("defendant Wencke") was personally served with a copy of the Complaint.

7. At the time of the service of the Complaint upon defendant Wencke, he was the receiver of defendant Sun Fruit, Ltd., a corporation in receivership in a proceeding then pending in the courts of the State of Nevada. Also at the time of the service of the Complaint upon him, defendant Wencke was president of Hawksfoot, Ltd., which in turn owned Rinn Corp., which in turn owned both defendant Royal St. Louis Corp. and defendant Royal Executive Inns of Omaha, Inc.

8. As such, defendant Wencke was both the general agent and managing agent of Sun Fruit, Ltd., Royal St. Louis Corp., and Royal Executive Inns of Omaha, Inc. Also as such, Wencke was the general manager and head of Sun Fruit, Ltd., Royal St. Louis Corp., and Royal Executive Inns of Omaha,

Ltd., Royal St. Louis Corp., and Royal Executive Inns of Omaha, Inc. Defendants Sun Fruit, Ltd., Royal St. Louis Corp., and Royal Executive Inns of Omaha, Inc., were thus served with the Complaint on July 28, 1976.

9. Defendants Sun Fruit, Ltd., Royal St. Louis Corp., Royal Executive Inns of Omaha, Inc., Karpos, Inc., and Phyo, Inc., have failed to answer the Complaint and default was duly entered against them on January 27, 1977.

10. On October 28, 1976, this Court entered an order denying the motion to dismiss brought on by certain defendants.

11. On September 28, 1976, the Commission filed a motion to, *inter alia*, preliminarily enjoin certain defendants from further violations of various provisions of the federal securities laws and place certain of these defendants in temporary receivership. This motion was supported by a memorandum of points and authorities which detailed a complex and ongoing scheme to loot two public companies – Sun Fruit, Ltd. and Time-Lenders, Inc. The Commission's memorandum was documented by annotation to numerous affidavits, exhibits and investigatory transcripts.

12. The defendants opposed the Commission's motion and filed their own memoranda, affidavits and exhibits.

13. On November 19, 1976, this Court granted a portion of the relief requested by the Commission's motion. The Findings of Fact and Conclusions of Law on Plaintiff's Motion for Interim Relief (hereinafter "the Findings on Plaintiff's Motion"), entered on December 20, 1976, are hereby adopted as final findings of fact and conclusions of law.

14. Included in the Findings on Plaintiff's Motion is the following:

> "5. An independent investigation is necessary to determine the nature and effect of Wencke's numerous self-dealing transactions on Time-Lenders. A full report must be made to Time-Lenders' former shareholders correcting possibly previous false and incomplete filings and to fully disclose the nature and effect of Wencke's transactions with Time-Lenders.
>
> 6. A receiver over Time-Lenders is also necessary to preserve the status quo pending the above-mentioned investigation and report.
>
> 7. The assets of Time-Lenders and the San Diego Environmental Charitable Trust are in danger of waste and dissipation as long as Wencke remains in control.
>
> * * * * *
>
> 10. Thre is a likelihood of irreparable harm to former shareholders of Time-Lenders and shareholders of defendant Sun Fruit unless the requested receivers are appointed.
>
> 11. There is a reasonable likelihood that unless enjoined the defendants will engage in further violations of the anti-fraud, periodic reporting, and proxy provisions of the Federal Securities Laws."

15. Pursuant to a notice of deposition and the order of the Honorable Harry R. McCue, U.S. Magistrate and Special Master in these proceedings, the deposition of defendant

Wencke was to convene on January 26, 1977 at 10:00 a.m. At the convening of said deposition, defendant Wencke refused to be sworn. Moreover, he had not filed any motion for a protective order.

16. On the motion of the Commission, the Honorable Harry R. McCue ordered defendant Wencke to appear on January 27, 1977 at 10:00 a.m. and be sworn to testify at his deposition. In willful and knowing violation of this order, defendant Wencke failed to appear at his deposition as required by said order.

17. Thereafter on January 27, 1977, before the Honorable Harry R. McCue, counsel for the defendants stated that their clients would not subject themselves to any discovery in this action. Said counsel indicated that their clients took this action in the knowledge and expectation that their answers would be stricken and default judgment entered against them forthwith.

18. Said counsel further stated that their clients intended to challenge this Court's subject matter jurisdiction in this proceeding and would take an appeal limited solely to that issue.

19. On January 27, 1977, and in accordance with the Federal Rules of Civil Procedure, the answers of the defendants were stricken and the clerk entered defaults as to each of them.

20. As set forth in the Conclusions of Law, *infra*, and in accordance with the Federal Rules of Civil Procedure, the defaulting defendants are deemed to admit all the allegations of the Complaint. [*See* Rule 8(d)]. As such, defendant Wencke and certain other defendants are deemed to admit that they

have been and are presently engaged in schemes to defraud the public investors of at least two companies. In addition, defendant Wencke and certain other defendants are deemed to admit that they have been and are presently engaged in violations of the periodic reporting and proxy provisions of the Securities Exchange Act of 1934 with respect to three public companies -- Sun Fruit, Ltd., Time-Lenders, Inc. and Santa Fe Financial Corp.

21. Defendant Wencke is deemed to admit the allegations of the Complaint to the effect that, in concert with others, he took control of the publicly-owned defendant Sun Fruit, Ltd. through fraud and then looted it of vaulable assets. Defendant Wencke is further deemed to admit the allegation that he placed defendant Sun Fruit in a Nevada state court receivership -- and moved to have himself appointed receiver – all to consummate and conceal his scheme to loot Sun Fruit. To protect Sun Fruit's public shareholders, this Court finds it necessary and appropriate that defendant Wencke be removed as receiver of Sun Fruit and that an independent receiver be appointed by this Court to investigate the allegations of fraud and take appropriate action.

22. Time-Lenders, Inc. is a virtually wholly-owned (95%) subsidiary of Santa Fe Financial Corporation, a public company. The defendants are deemed to admit the allegations of the Complaint that defendant Wencke used the funds of this subsidiary of Santa Fe Financial to aid him in his scheme to fraudulently take over and loot defendant Sun Fruit, Ltd. in 1972. The defendants are also deemed to admit that defendant Wencke, in violation of the Federal securities laws, concealed Santa Fe Financial's subsidiary's (Time-Lenders) acquisition

of land from Wencke-owned entity and that Wencke defrauded said subsidiary.

23. Also, defendant Wencke and certain other defendants are deemed to admit that from 1974 to the present, defendant Wencke caused Santa Fe Financial Corp. to file periodic reports with the Commission which were materially incomplete and not timely filed. These defendants are also deemed to admit that defendant Wencke caused materially incomplete information statements to be distributed to Santa Fe Financial Corp.'s public shareholders. Defendants Wencke, Santa Fe Financial Corp. and certain other defendants are deemed to admit that defendants Wencke and Santa Fe Financial Corp. "have violated, are violating, and are about to violate" Sections 13(a) [periodic reporting provisions] and 14 [proxy provisions] of the Securities Exchange Act of 1934.

24. In light of the serious allegations of the Complaint, all of which the defendants are deemed to admit, the Court finds it necessary, proper and in the public interest that relief be granted which will ensure that neither Santa Fe Financial, nor its public shareholders are further harmed by violations of the Federal securities laws. The appointment of a receiver over Santa Fe Financial Corp. and its subsidiaries is the appropriate relief to prevent such harm and the appointment of the receiver will ensure that Santa Fe Financial's public shareholders receive the information to which they are entitled under the law -- information which defendant Wencke has admittedly denied these shareholders in the past.

25. The Court further finds it necessary and appropriate, under the exceptionally complex circumstances of this case,

to appoint a special master to supervise and give guidance to the receiver and to make recommendations to this Court with respect to said receiver.

26. The Court further finds that defendant Wencke's admitted serious violations of the Federal securities laws -- including innumerable knowing and intentional acts of fraud and looting against the shareholders of at least two public companies - warrant the imposition of relief which will ensure that such conduct will not be repeated. This Court finds that the only relief which will ensure that such acts will not be repeated is that defendant Wencke be prevented from remaining in, or taking, any position in which he acts as an officer, director or controlling person of any public company - unless and until he demonstrates to this Court, clearly and convincingly, that he will not engage in such conduct in the future.

27. Inasmuch as the receiverships made permanent hrein are established to protect the shareholders of public companies, and are not established as part of any insolvency action, the Court finds it advisable and in furtherance of protecting the interests of both the public shareholders and the entities in receivership, that until ordered by this Court, creditors of the entities in receivership need not be notified of the establishment of the receiverships.

28. Every conclusion of law contained in the foregoing Findings of Fact shall be deemed to be a conclusion of law as if set forth below as a conclusion of law.

CONCLUSIONS OF LAW

1. Pursuant to Section 22(a) of the Securities Act [15 U.S.C. §77v(a)] and Section 27 of the Securities Exchange Act [15 U.S.C. §78aa], this Court has jurisdiction over the subject matter of the Complaint.

2. The Court concludes that personal jurisdiction has been obtained over defendants Sun Fruit, Ltd., Royal Executive Inns of Omaha, Inc. and Royal St. Louis Corp.:

a. pursuant to F.R.Civ.P. 4(d)(3) in that personal service was made on defendant Wencke - their managing agent and general agent;

b. pursuant to F.R.Civ.P. 4(d)(7) in that the law of this state permits service to be made on a corporation by service on the "head of the corporation" or "general manager," and such service was made by personally serving defendant Walter Wencke.

3. The Court concludes it has personal jurisdiction over all defendants named in finding of fact number four in that service of the Complaint was duly accepted by Murry Luftig, Esq. on behalf of these defendants.

4. Defendants Sun Fruit, Ltd., Karpos, Inc., Phyo, Inc., Royal Executive Inns of Omaha, Inc., and Royal St. Louis Corp. were all duly served with the Complaint in July 1976, and this Court has jurisdiction over each of them. Pursuant to F.R.Civ.P. 8(d), their failure to answer the Complaint is an admission of the averments therein and warrants entry of the relief prayed for in the Complaint with respect to them.

5. The Court concludes that, contrary to the contention of certain defendants in their motion to dismiss, even if defendant Sun Fruit, Ltd. were not made a party to this action, that F.R.Civ.P. 19(b) would not warrant dismissal of this action. Firstly, complete relief as to the remaining defendants can be accorded without defendant Sun Fruit being made a party. Secondly, Sun Fruit's absence would not prejudice the other parties, the shaping of relief could lesson or avoid any prejudice, a judgment without Sun Fruit would be adequate, and if the action were dismissed plaintiff Commission would have no adequate remedy.

6. Because the answers of certain defendants were stricken, said defendants failed to deny the allegations of the Complaint. Therefore, pursuant to F.R.Civ.P. 8(d) all allegations of the Complaint are admitted, and default was properly entered against these defendants on January 27, 1977.

7. Plaintiff Commission is entitled, *inter alia*, to disgorgement as requested in the prayer for relief, to wit, that defendant Wencke disgorge "any and all assets or monies improperly used, taken, wasted or misappropriated in breach of fiduciary duties to Sun Fruit and Time-Lenders . . . ." Such relief is appropriate to deprive an admitted violator of any ill-gotten gains.

8. In order to enter a final judgment with respect to disgorgement, it is necessary to determine what type and amount of disgorgement, if any, is appropriate. To make this determination, the Court concludes that it is necessary and appropriate, in light of the exceptionally complex circumstances of this case, to appoint, pursuant to F.R.Civ.P.

55(b)(2), a special master to conduct hearings and make a report to this Court as to the appropriate amount and form of disgorgement, if any. Said special master shall be granted the appropriate discovery powers necessary to conduct such hearings.

9. The defendants are deemed to admit that defendant Wencke used the funds of a virtually wholly-owned subsidiary of Santa Fe Financial (Time-Lenders, Inc.) to further a scheme to fraudulently take over and loot defendant Sun Fruit, Ltd., a company with over one thousand public shareholders. The defendants are further deemed to admit that defendant Wencke intitiated transactions in violation of the anti-fraud provisions of the Federal securities laws, which depleted assets of said subsidiary. The defendants are further deemed to admit that defendant Wencke and Santa Fe Financial have violated and are violating the periodic reporting and proxy provisions of the federal securities laws. The aforementioned conduct plainly constitutes fraud and mismanagement of Santa Fe Financial by defendant Wencke and warrants the appointment of a receiver over Santa Fe Financial. Such an appointment is necessary and proper to prevent furtehr fraud and mismanagement and to protect the interests of Santa Fe Financial's numerous public shareholders. The Court also finds it necessary and proper to order that defendant Wencke disgorge any assets which this Court may find to have been wrongfully taken from Santa Fe Financial or its subsidiaries.

10. The public interest requires that an independent federal receiver be appointed over Sun Fruit, Ltd. This Court has the power to appoint such a receiver in the unusual facts of this

case. notwithstanding the existence of a state receivership over Sun Fruit, Ltd. The appointment of a receiver by this Court is necessary to protect the shareholders of Sun Fruit, who are innocent victims of what the defendants admit was a scheme to fraudulently take over and loot Sun Fruit. To prevent the Nevada state court proceeding from being further utilized as Wencke's vehicle to consummate and conceal his looting of Sun Fruit, this Court concludes that it is necessary and appropriate to enjoin any further proceedings in the Nevada State court receivership over Sun Fruit. This relief is necessary and appropriate to aid this Court in the exercise of its jurisdiction over Sun Fruit and to protect and effectuate those portions of the Judgment which place Sun Fruit in federal receivership and enjoin Walter Wencke from further acts in furtherance of his scheme to loot Sun Fruit.

11. In light of the admitted allegations of the Complaint regarding the role of Familia 4, Ltd. as an instrument in the looting of Sun Fruit, and for the other reasons set forth herein, teh Court concludes that it is necessary and appropriate to place Familia 4, Ltd., in receivership.

12. The relief set forth in the Judgment is appropriate and necessary for the public interest. Unless said relief is granted, there is a likelihood that the defaulting defendants will engage in future shareholders of Sun Fruit, Ltd., Time-Lenders, Inc., Santa Fe Financial Corp. (and possibly, in the future, other public companies) will be harmed. The equities have been carefully weighted by this Court – and the balancing of the equities warrant the imposition of the relief granted in the accompanying Judgment.

13. Every finding of fact contained in the foregoing Conclusions of Law shall be deemed a finding of fact as if set forth as a finding of fact.

DATED this 3rd day of March, 1977.

s/s

Gordon Thompson, Jr., Judge
U.S. District Court

UNITED STATES DISTRICT COURT
SOUTH DISTRICT OF CALIFORNIA

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RE: SEC vs. Walter Wencke, et al., 76-0783-GT

You are hereby notifed that findings of fact & the final Judgment & amended order re payment of fees in each of the above-entitled cases was xx Filed xx Entered on 3-3-77 & 2-23-77.

xx Copy enclosed ___Copy not enclosed.

When the time for appeal has expired (without appeal being taken), counsel must arrange for pickup of their exhibits without further notice. Unless you respond within thirty days, they will be destroyed or otherwise disposed of pursuant to Local Rule 20(a).

I hereby certify that this notice was mailed on 3-8-77.

WILLIAM W. LUDDY, Clerk

By s/s
Deputy Clerk
S. L. Ritchey

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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, v. WALTER WENCKE, et al., Defendants.	Civil Action No. 76-0783-GT FINAL JUDGMENT OF PERMANENT INJUNCTION, APPOINTMENT OF RECEIVER AND SPECIAL MASTER, AND OTHER RELIEF

The Court, having noted the appearance of counsel for the plaintiff and the defendants, it appearing to the Court that it has jurisdiction over the parties and the subject matter hereof, the plaintiff Securities & Exchange Commission being entitled to judgment by default against the defendants as set forth herein, default having been duly entered by the Clerk of the Court on January 27, 1977 pursuant to the Order of this Court; and for good cause appearing therefor, the Court being fully advised in the premises:

IT IS ORDERED, ADJUDGED AND DECREED that defendants WALTER WENCKE, CATHRYN WENCKE, TIME-LENDERS, INC., SUN FRUIT, LTD., SAN DIEGO ENVIRONMENTAL CHARITABLE TRUST, ZIPPE, LTD., HAWKSFOOT, LTD., RINN CORP., 17TH CORP., SUNDOWNER CORP., ROYAL EXECUTIVE INN-SUNNYVALE, INC., ROYAL EXECUTIVE INNS OF OMAHA, INC., ROYAL ST. LOUIS CORP., RINNS OF UTAH, INC., RINN MOTOR HOTELS, INC., KARPOS, INC., PHYO, INC., IRREANTUM, INC., BUTT TRUST, SAILOR TRUST, THE GRAPE INSTITUTE TRUST, THE GRAPE INSTITUTE, INC., THE BARBARA CORPORATION, FAMILIA 4, LTD., BUSINESS CONSULTANTS, INC. (hereinafter "enjoined defendants"), their respective agents, servants, employees, subsidiaries, attorneys, and all persons in active concert or participation with them, and each of them, be and hereby are permanently enjoined and restrained from the following acts, practices, and courses of conduct:

A. directly or indirectly, in the *offer or sale*, or in connection with the purchase or sale, *of any security* by use of any means or instrumentality of interstate commerce or by use of any means or instruments of transportation or communication in interstate commerce, or by use of the mails:

(1) employing any device, scheme or artifice to defraud;

(2) engaging in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person;

(3) making any untrue statement of a material fact or omitting to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, including but not limited to the following, regarding an issuer or subsidiary thereof:

(a) financial condition, results of operations, or earnings;

(b) the value, cost or nature of any asset or property; or the mark-up or profit on any property sold, leased, or otherwise transferred by or to the issuer (or any subsidiary thereof);

(c) the financial ability, assets, earnings, or net worth of any person or entity indebted or obligated to the issuer (or any subsidiary thereof);

(d) the amount and nature of the compensation or other benefits received by any officer, director, major shareholder, or controlling person:

(i) from the issuer (or any subsidiary thereof); or

(ii) by reason of any action of the issuer (or any subsidiary thereof);

(e) the nature, substance or material circumstances surrounding any transaction

engaged in by the issuer or any subsidiary thereof;

(f) the existence, nature or terms of any transaction engaged in, in which any of the issuer's officers, directors, major shareholders or controlling persons, or relative of any of the foregoing, has any direct or indirect material interest;

(g) the existence, amount, or delinquency of any indebtedness to the issuer (or any subsidiary) by:

(i) any officer, director, major shareholder, or controlling person of the issuer;

(ii) any relative of any officer, director, major shareholder, or controlling person of the issuer;

(iii) any entity in which any person in (i) or (ii) has any direct or indirect material interest;

(h) the amount and nature of any person's or entity's interest in the issuer (or any subsidiary thereof);

(i) the use of corporate assets for the personal benefit of any officer, director or controlling person;

(j) the existence or terms of this injunction;

(k) the facts and circumstances surrounding the issuance of this injunction and the appointment of the receivers herein;

(4) obtaining money or property by means of any untrue statement of a material fact or omitting to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, including but not limited to, the matters or facts set forth in subparagraph three (3) above, or any other untrue statement or omission of similar purport or object;

B. directly or indirectly, engaging in any act, practice or course of business which violates Section 10(b) of the Exchange Act [15 U.S.C. §78j(b)], Rule 10b-5 thereunder [17 CFR 240.10b-5] or Section 17(a) of the Securities Act [15 U.S.C. §77q(a)].

C. directly or indirectly, making or causing to be made any untrue statement of material fact or omitting to state any material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, to present or former shareholders of any issuer or corporation whose securities are registered with the Commission pursuant to Section 12 of the Exchange Act [15 U.S.C. §781], including but not limited to, Sun Fruit, Ltd., Time-Lenders, Inc., and Santa Fe Financial Corp.

II

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that defendants WALTER WENCKE, SUN FRUIT, LTD., SANTA FE FINANCIAL CORP., TIME-LENDERS, INC., their respective agents, servants, employees, subsidiaries, attorneys and all persons in active concert or participation with them, and each of them, be and hereby are permanently enjoined and restrained from the following acts, practices and courses of conduct:

A. directly or indirectly, preparing, filing or disseminating any information, notice, statement, report, form, schedule, information statement, annual report, proxy statement, form of proxy, notice of meeting, amendment, or other document, pursuant to Section 13(a), 14(a) or 14(c) of the Exchange Act [15 U.S.C. §78m(a), §78n(a) or §78n(c)]:

(1) which is materially incomplete or which makes a material omission of required information; or

(2) which contains any statement which, at the time and in the light of the circumstances under which it is made, is false or misleading with respect to any material fact, or which omits to state any material fact necessary in order to make the statements therein not false or misleading, including but not limited to, the matters or facts set forth in subparagraph three (3) above, or any other untrue statement or omission of similar purport or object; or otherwise engaging in any act, practice or course of business which violates

Section 13(a), 14(a) or 14(c) of the Exchange Act [15 U.S.C. §78m(a), §78n(a) or §78n(c)], Rule 13a-1, 13a-11, 14a-3, 14a-6, 14a-9, 14c-2, 14c-3, 14c-6 [17 CFR 240.13a-1, 13a-11, 14a-3, 14a-6, 14a-9, 14c-2, 14c-3, 14c-6] or any other rule promulgated under those sections;

B. directly or indirectly, failing to timely and properly file and distribute, or causing any other person or entity to fail to timely and properly file and distribute, any information, notice, statement, filing, report, form, schedule, information statement, annual report, amendment, or other document, required to be filed by Section 13(a), 14(a) or 14(c) of the Exchange Act [15 U.S.C. §78m(a), §78n(a) or §78n(c)], or any rule promulgated thereunder, including but not limited to Rules 13a-1, 13a-11, 14a-3, 14a-6, 14c-2, and 14c-3 [17 CFR 240.13a-1, 13a-11, 14a-3, 14a-6, 14c-2 and 14c-3].

III

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that defendants WALTER WENCKE, TIME-LENDERS, INC., their respective agents, servants, employees, subsidiaries, attorneys, and all persons in active concert or participation with them, and each of them, be and hereby are permanently enjoined and restrained from the following acts, practices, and courses of conduct:

A. directly or indirectly, preparing, filing or disseminating any statement, notice, report, form, schedule, amendment or other document, pursuant to Section 13(d) of the Exchange Act [15 U.S.C. §78m(d)]:

(1) which is materially incomplete or which makes a material omission of required information; or

(2) which contains any statement which, at the time and in the light of the circumstances under which it is made, is false or misleading with respect to any material fact, or which omits to state any material fact necessary in order to make the statements therein not false or misleading;

B. directly or indirectly, failing to timely and properly file and distribute, or causing any other person or entity to fail to timely and properly file and distribute, any statement, notice, filing, report, form, schedule, amendment or other document, required to be filed by Section 13(d) of the Exchange Act [15 U.S.C. §78m(d)], or any rule promulgated thereunder, including but not limited to Rule 13d-1 [17 CFR 240.13d-1];

C. directly or indirectly

(1) failing or causing the failure to file with the Commission or the sending to the issuer or appropriate national securities exchange, a statement containing the information required by Schedule 13D, within ten (10) days of any person acquiring, directly or indirectly, the beneficial ownership of more than five percent (5%) of a class of any security registered with the Commission pursuant to Section 12 of the Exchange Act [15 U.S.C. §781]; or

(2) engaging in any other act, practice or course of business which violates Section 13(d) of the Exchange Act [15 U.S.C. §78m(d)], Rule 13d-1 [17 CFR 240.13d-1] or any other rule promulgated thereunder.

IV

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that defendants WALTER WENCKE, SUN FRUIT, LTD., TIME-LENDERS, INC., their respective agents, servants, employees, subsidiaries, attorneys, and all persons in active concert or participation with them, and each of them, be and hereby are permanently enjoined and restrained from the following acts, practices, and courses of conduct:

A. directly or indirectly, preparing, filing or disseminating any information, statement, notice, report, form, schedule, information statement, annual report, proxy statement, form of proxy, notice of meeting, amendment, or other document, pursuant to Section 14(f) of the Exchange Act [15 U.S.C. §78n(f)]:

(1) which is materially incomplete or which makes a material omission of required information; or

(2) which contains any statement which, at the time and in the light of the circumstances under which it is made, is false or misleading with respect to any material fact, or which omits to state any material fact necessary in order to make the statements therein not false or misleading;

B. directly or indirectly, failing to timely and properly file and distribute, or causing any other person or entity to fail to timely and properly file and distribute, any information, statement, notice, filing, report, form, schedule, information statement, annual report, amendment, or other document, required to be filed by Section 14(f) of the Exchange Act [15 U.S.C. §78n(f)], or any rule promulgated thereunder, including but not limited to Rule 14f-1 [17 CFR 240.14f-1].

C. directly or indirectly,

(1) failing or causing the failure to file with the Commission and transmission to all holders of record of securities who would be entitled to vote at a meeting for election of directors, prior to the time any of the below-mentioned persons takes office as a director, the information required by the rules and regulations prescribed by the Commission, if, pursuant to any arrangement or understanding with any person(s) acquiring securities in a transaction subject to Section 13(d) or 14(d) of the Securities Exchange Act of 1934 [15 U.S.C. §78m(d) or n(d)], any persons are to be elected or designated as directors of the issuer, otherwise than at a meeting of security holders, and the persons so elected or designated will constitute a majority of the directors of the issuer; or

(2) engaging in any other act, practice or course of business which violates Section 14(f) of the Exchange Act [15 U.S.C. §78n(f)], Rule 14f-1 [17 CFR 240.14f-1], or any other rule promulgated thereunder.

V

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that defendants WALTER WENCKE, SUN FRUIT, LTD. and TIME-LENDERS, INC., their respective subsidiaries, affiliates, officers, directors, agents, servants, employees, attorneys, depositories, banks, and those persons in active concert or participation with them, and each of them, except such receivers as the Court may appoint, be and hereby are permanently restrained and enjoined, except by leave of this Court, from directly or indirectly causing, aiding, abetting, or inducing:

A. the hinding, transferring, receiving, changing, selling, pleding, assigning, disposing of, withdrawing, or failing to maintain, any assets or property, now or formerly, owned, controlled or in the possession of defendant Sun Fruit, Ltd. or its past or present subsidiaries; or

B. the transferring, changing, hiding, destroying, failing to maintain, or otherwise disposing of any books, records of account, title documents, or other papers of any kind and nature, of or relating, directly or indirectly, to any corporation or trust named a defendant to this action, or their past or present subsidiaries or affiliates.

VI

IT IS FURTHER ORDERED that:

A. R.N. Gould be appointed receiver for THE SAN DIEGO ENVIRONMENTAL CHARITABLE TRUST,

ZIPPE, LTD., HAWKSFOOT, LTD., RINN CORP., 17TH CORP., SUNDOWNER CORP., ROYAL EXECUTIVE INNS OF OMAHA, INC., ROYAL EXECUTIVE INN-SUNNYVALE, INC., RINN MOTOR HOTELS, INC., RINNS OF UTAH, INC., and ROYAL ST. LOUIS CORP., and their respective subsidiaries, for SANTA FE FINANCIAL CORPORATION and its subsidiaries, for TIME-LENDERS, INC. and its subsidiaries (including but not limited to METI-FINANCIAL, INC. and INVESTMENT ITEMS, LTD.), for SUN FRUIT, LTD. and its subsidiaries, and for FAMILIA 4, LTD. --hereinafter "the entities in receivership" -- with full power of an equity receiver, with directions and authority to accomplish the following, subject to a bond in an amount satisfactory to the Court, to wit $100,000 (to be posted within twenty (20) days of assuming his duties), conditioned on the faithful performance of his duties as said receiver, and after having taken the oath required by law and being otherwise qualified:

(1) To take custody, control and possession of all the funds, property, premises (owned, leased, occupied, or otherwise controlled), and other assets of or in the possession or under the control of the entities in receivership wherever situated, with full power to sue for, marshal, collect, receive, and take into possession all goods, chattels, rights, assets, monies, effects, lands, leases, books and records of account and other papers and documents of the entities in receivership. With respect to The San Diego Environmental Charitable Trust, Zippe, Ltd., Hawksfoot,

Ltd., Rinn Corp., 17th Corp., Sundowner Corp., Royal Executive Inns of Omaha, Inc., Royal Executive Inn-Sunnyvale, Inc., Rinn Motor Hotels, Inc., Rinns of Utah, INc., Royal St. Louis Corp., Time-Lenders, Inc., Meti-Financial, Inc., Investment Items, Ltd., and their respective subsidiaries, the receiver shall take custody of the assets and property owned or under the possession or control of said entities as of 2:00 p.m. on November 19, 1976, or presently. With respect to all other entities in receivership, the receiver shall take custody of the assets and property owned or under the possession or control of said entities as of 11:00 a.m. on February 28, 1977, or presently;

(2) To conserve, hold, manage, and operate all the assets, pending further order of this Court, to conserve and prevent the withdrawal and misapplication of funds or assets controlled by the entities in receivership and to obtain an accounting thereof;

(3) To make such payments and disbursements from the funds and assets so taken into custody, control and possession or thereafter received by him, and to incur such expenses and make such agreements as may be necessary and advisable in discharging his duties as receiver, and to employ persons to operate the entities in receivership. This shall include the payment of salaries of present or future employees of the entities in

receivership, and expenses relating to operations such as lease of office space, equipment, insurance, indebtedness, utilities, and the like;

(4) To engage and employ counsel, accountants, and other persons to audit and investigate the financial condition, transactions, books, records and accounts of the entities in receivership and to evaluate the assets of said entities;

(5) To engage and employ counsel to resist and defend all suits, actions and claims and demands which may now be pending or which may be brought or asserted against any of the entities in receivership;

(6) To present to this Court, by April 30, 1977, or as otherwise directed by this Court, his report reflecting the existence and value of the assets and actionable claims of the entities in receivership, the extent of their liabilities, both those claimed to exist by others and those which the receiver believes to be their legal obligations, and any further information which the receiver believes may assist this Court in disposing of this action. This report should also contain the receiver's opinion regarding the ability of the entities in receivership to meet their obligations as they become due and his recommendation regarding the necessity for reorganization or orderly liquidation of any asset of the entities in receivership;

(7) To investigate, and where appropriate, institute, pursue, and prosecute all claims and causes of action of whatever kind and nature which may now or hereafter exist as a result of the activities by past management, controlling persons or employees of the entities in receivership, or others. The receiver in his discretion, may hire counsel to investigate, institute, pursue, and prosecute all such claims;

(8) To within ten (10) days of the entry of this judgment, file a copy of both this judgment and the Complaint in the District Court for each district in which property of the entities in receivership is located. See 28 U.S.C. §754;

(9) No property or assets of the entities in receivership shall be sold, abandoned or disposed of by the receiver except by order of this Court and after such notice to such persons as this Court shall direct;

(10) To review all past filings with the Securities and Exchange Commission and reports to shareholders made by Santa Fe Financial Corp., Time-Lenders, Inc., and Sun Fruit, Ltd. for material misstatements or omissions and to prepare and file with this Court a report on the results of said inquiry. A copy of said report shall be filed with the Securities and Exchange Commission and appropriate portions mailed to the respective present and former shareholders of those entities by October 31, 1977 (and at such other times as the receiver deems appropriate);

(11) Upon application to and approval of this Court, to merge or dissolve any entities in receivership for the purpose of efficient managment of corporate activities, and specifically to remove inactive and/or shell corporations.

B. The enjoined defendants, their affiliates, subsidiaries, officers, directors, servants, attorneys, agents, managers, employees, and all others, be and hereby are commanded and required:

(1) to deliver over to said receiver possession and custody of all funds, securities, accounts wherever situated, property, premises (owned, leased, occupied or otherwise controlled) and all other assets and all books and records of account, title documents and other papers of the entities in receivership; and

(2) to refrain from interfering with said receiver taking such custody, control or possession; and

(3) to refrain from interfering in any manner, directly or indirectly, with such custody, possession, management and control by said receiver.

C. Said reciever, and any counsel, accountant, business consultant, or other experts whom the receiver may select, shall be entitled, subject to the approval of this Court, to appropriate compensation from the assets now held or which may be received by the entities in receivership. Employees of the entities in receivership hired by the receiver may be paid, without application to this Court, as set forth in paragraph A(3) hereof.

D. Except by leave of this Court or until further order of this Court, during the pendency of any receivership ordered herein, all investors, creditors, and other persons, and all others acting on behalf of any such investor, creditor or other person, including sheriffs, marshals, other officers, deputies, servants, agents, employees, and attorneys, be and hereby are stayed from:

(1) Commencing, prosecuting, continuing or enforcing any suit or proceeding against the entities in receivership, except that such actions may be filed to toll any statute of limitations;

(2) Using self-help or executing or issuing or causing the executiion or issuance of any court attachment, subpoena, replevin, execution or other process for the purpose of impounding or taking possession of or interfering with or creating or enforcing a lien upon any property owned by or in the possession of the entities in receivership or the receiver, wheresoever situated;

(3) Attempting to modify, cancel, terminate, call, extinguish, revoke, or accelerate (the due date), any lease, loan, mortgage, indebtedness, security agreement or other agreement with any of the entities in receivership or any entity controlled by them; and

(4) Doing any act or thing whatsoever to interfere with the taking control, possession, or management, by the receiver appointed herein, of the

property and assets owned, controlled or in the possession of the entities in receivership, or to in any way interfere with or harass said receiver, or to interfere in any manner with the exclusive jurisdiction of this Court over the entities in receivership.

VII

IT IS FURTHER ORDERED that defendant Walter Wencke disgorge and place under the control of this Court any and all assets or monies taken directly or indirectly from defendants Sun Fruit, Ltd., Time-Lenders, Inc. or Santa Fe Financial Corp. (or their current or former subsidiaries), in violation of state or federal law or in breach of fiduciary duty. The Special Master, as set forth below, shall submit to this Court a report containing his recommendations on the appropriate manner and amount of disgorgement, if any. Thereafter, defendant Wencke shall make disgorgement as may be ordered by this Court following its consideration of the report of the Special Master.

VIII

IT IS FURTHER ORDERED that, pursuant to Federal Rule of Civil Procedure 55(b)(2), the Honorable Harry R. McCue, U.S. Magistrate, be and hereby is appointed Special Master in this proceeding. The Special Master shall:

(1) give guidance to the receiver appointed herein in the carrying out of his duties and to make recommendations to the Court with respect to the activities of the receiver. Said recommendations shall include the proper fees to be paid to the receiver and any experts or

other persons whom he employs in the performance of his duties;

(2) assist and supervise the receiver in carrying out his duties. The Special Master shall have the power, on his own initiative or at the request of the receiver, to require the production of any relevant books, records, papers, and documents and may subpoena witnesses and place them under oath, and require them to answer relevant questions (subject to other rights they may have) posed by the Special Master, the receiver (or his counsel), and other parties to this action;

(3) report to this Court the amount and form of disgorgement to be made by defendant Walter Wencke, if any. Said report is to be based upon such hearings to be conducted by the Special Master as he shall direct. The recommendations of the Special Master as to disgorgement shall be in the form of a report as set forth in F.R.Civ.P. 53(e)(1), and his report subject to the objections of the parties to this action as set forth in F.R.Civ.P. 53(e)(2); and

(4) advise the Court, when necessary and appropriate, of the progress of the receiver, and make recommendations which will assist the Court in effectuating this Judgment in a manner which is fair, efficient and effective and which provides the maximum protection possible to public stockholders.

IT IS FURTHER ORDERED that the Special Master shall have the power to regulate all proceedings in every hearing before him and to do all acts and take all measures necessary

or proper for the efficient performance of his duties under this Judgment, including but not limited to, the power to subpoena witnesses and place them under oath, to require the production of documents, to require that written interrogatories be answered, and to require that accountings be furnished.

IX

IT IS FURTHER ORDERED that defendant Walter Wencke is restrained and enjoined:

(a) from holding any position in which he acts, directly or indirectly, as an officer or director of any company whose securities are trading over any exchange or in the over-the-counter market, or whose securities are registered with plaintiff Commission pursuant to Section 12 of the Securities Exchange Act of 1934 [15 U.S.C. §781]; or

(b) from directly or indirectly controlling or exercising any control over such company.

The provisions of this Paragraph IX shall become effective thirty (30) days following the entry of this Judgment.

X

IT IS FURTHER ORDERED that defendant Walter Wencke shall, within thirty (30) days, submit any resignations, create any voting trusts, install independent directors, and do any other lawful and proper act necessary to carry out the above Paragraph IX of this Judgment. Twenty (20) days from the entry of this Judgment, defendant Wencke

shall advise the Special Master and the parties to this action, on the status of his association with any companies described in Paragraph IX, and shall so report on this status every ten (10) days until he certifies by affidavit that he has complied with said Paragraph IX. Said Paragraph IX may be modified or deleted from this Judgment upon a finding that defendant Wencke has demonstrated to the Court, through clear and convincing evidence, that he will engage in neither the type of acts alleged in the Complaint nor similar acts in breach of fiduciary duty or in violation of law. Any application for such relief shall be made upon not less than ninety (90) days written notice to both plaintiff Commission's Director of the Division of Enforcement (in Washington, D.C.) and the Regional Administrator of its Los Angeles Regional Office. The Commission shall have the right to produce such evidence and conduct such discovery as may be necessary or appropriate to respond to the application.

XI

If the receiver should determine, because of possible conflicts of interest, or for other reasons, that it is inappropriate to have a single receiver appointed over all the entities in receivership, the receiver may make application to this Court for appropriate relief.

The receiver shall not be liable for any action taken or omitted to be taken by him, or for any error in judgment made by him in his capacity as receiver, unless it be specifically proven that he was grossly negligent in connection with such action, omission or judgment. The receiver shall have the right to resign upon giving due notice to this Court, in which event a successor may be appointed by this Court in the manner provided by law.

XII

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Eighth Judicial District of the State of Nevada in and for the County of Clark, Case No. A 143 882, in Re Sun Fruit, Ltd., and the Receiver, WALTER WENCKE, appointed therein, and their successors, affiliates, subsidiaries, officers, directors, servants, attorneys, agents, managers, employees, and all persons in active concert or participation with them, and all others, and each of them, be and hereby are commanded and required:

(1) to deliver over to R.N. Gould, as receiver appointed by this Court, possession and custody of all funds, securities, accounts wherever situated, property, premises (owned, leased, occupied or otherwise controlled), and all other assets and all books and records of account, title documents and other papers of Sun Fruit, Ltd., and its subsidiaries and any Limited Partnerships in which either Sun Fruit, Ltd. or its subsidiaries is the sole General Partner;

(2) to refrain from interfering with R.N. Gould, as receiver, taking control, custody, or possession;

(3) to refrain from interfering in any manner, directly or indirectly, with such custody, possession, mangement and control by R.N. Gould, as receiver; and

(4) to refrain from taking any further action in regard to the above referenced Case No. A 143 882, or Sun Fruit, Ltd. and its subsidiaries and any limited partnerships in which either Sun Fruit, Ltd., or its subsidiaries is the sole general partner, except as is necessary to comply with this Judgment.

XIII

IT IS FURTHER ORDERED that the Court reserve the right to make and enter such further orders and decrees upon the application of the receiver or Special Master appointed herein, or that may be necessary for the guidance of said persons in the performance of their duties herein established.

IT IS FURTHER ORDERED that this Court retain jurisdiction in order to implement and carry out the terms of this Judgment and to entertain any suitable application or motion by the parties to this action, or other appropriate persons, for additional relief within the jurisdiction of this Court.

XIV

The receiver appointed herein shall cooperate, to the extent practicable, with federal and state law enforcement and regulatory agencies in the performance of their duties.

XV

The U.S. Marshal in this and other districts shall comply forthwith with any requests by either the Special Master or receiver appointed herein that this Judgment be served or that any provision thereof be carried out or enforced.

DATED this 3rd day of March, 1977

s/s

Gordon Thompson, Jr., Judge
United States District Court

CASE NO. A 143 882

DEPT. VIII

IN THE DISTRICT COURT

OF THE EIGHTH JUDICIAL DISTRICT

IN AND FOR THE COUNTY OF CLARK

IN RE: SUN FRUIT, LTD. a Nevada corporation	FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

The Petitions of ZIPPE, INC. and HAWKSFOOT, LTD. came on for hearing on February 27, 1975 at 1:30 P.M. in Department VIII. ZIPPE, INC. and HAWKSFOOT, LTD. appeared through their attorney, MELVIN D. CLOSE, JR., JONES, JONES, BELL, LE BARON, CLOSE & BROWN. The Receiver, Mr. Walter Wencke, appeared through his attorney, PAUL V. CARELLI, III. The Receiver was also present personally. Mr. Richard Mets, who has appeared as a party herein, was served with the Petitions of ZIPPE and HAWKSFOOT but did not file responsive pleadings and did not present himself. The Intervenor, The People of the State of California, by and through the Commissioner of Corporations of the State of California, appeared thorugh EVELLE J. YOUNGER, Attorney General of the State of Califonria by RICHARD W. BAKKE, Deputy Attorney General.

The Court having heard the testimony of the witnesses and reviewed the documentary evidence, having heard the arguments of counsel, and good cause appearing therefor, the Court makes the following Findings of Fact, Conclusions of Law and Order:

FINDINGS OF FACT

1. Walter Wencke, the Receiver of SUN FRUIT, LTD., is a Director of Zippe, Ltd. and is a trustee of The San Diego Environmental Charitable Trust, which is the owner of Zippe, Ltd. The Receiver has no beneficial interest in Zippe. He has received no salary or other payment from Zippe.

2. The Receiver is also a director of Hawksfoot, Ltd. and is a trustee of The San Diego Environmental Charitable Trust, which is the owner of Hawksfoot, Ltd. The Receiver has no beneficial interest in Hawksfoot. He has received no salary or other payment from Hawksfoot or from any Hawksfoot subsidiary.

3. Walter Wencke has disqualified himself as Receiver in the Zippe and Hawksfoot claims against Sun Fruit.

4. Sun Fruit has previously been known by the names of Royal Executive Inns of America, Inc. and The Rinn Corporation.

5. Wine Lands, Inc., at all times material, was a wholly owned subsidiary of Sun Fruit.

6. Wine Lands, Inc. and Sun Fruit have been alter egos of each other in dealings with Hawksfoot in that Sun Fruit and Wine Lands, under the common control of Mr. Mets, flowed money back and forth between themselves. From the period of April 1, 1974, through March 31, 1975, the cumulative total of $702,431 flowed from Wine Lands into Sun Fruit and conversely the cumulative total $760,436 flowed from Sun Fruit into Wine Lands. Mr. Mets signed the checks of Sun Fruit and Wine Lands. Mr. Mets controlled the flow of funds between Wine Lands and Sun Fruit. Mr. Mets, as President of Wine Lands, on December 31, 1974, assigned a Shaw Holding Company note of $445,000 which was later purchased by Hawksfoot from Sun Fruit, to Wine Lands. Mr. Mets controlled the personnel of both Wine Lands, Inc. and Sun Fruit.

7. Zippe owes $122,929.42 (consisting of notes of $34,000 and $88,299.42) to Sun Fruit. Business Consultants has assigned a $144,538 claim which it has against Sun Fruit to Zippe.

8. Hawksfoot, Ltd. a parent of Rinns of Utah, Inc., owes Wne Lands, Inc. $522,258.56 plus accrued interest to December 31, 1975 of $29,377.05. Rinns of Utah has assigned a claim which it has against Sun Fruit of $245,000 plus accrued interest to December 31, 1975 of $37,566.67 to Hawksfoot, as partial payment of its debt to Wine Lands.

9. Prior to February 29, 1972, Royal Executive Inns of America, Inc., a hotel chain operator, had a severe cash flow shortage and was unable to meet its obligations as they matured, or were about to mature.

10. On February 29, 1972, Meti Financial acquired 492,142 shares of stock from the directors of Royal Executive Inns of America, INc. The contract recites:

> "WHEREAS, Royal Executive Inns of America, Inc., hereinafter called REI, has become in precarious need of an injection of new capital and financing, and
>
> "WHEREAS, the BOARD believes that they are unable to maintain the financial stability of the company without major modifications in managemewill provide the necessary influx of monies to cover current financial obligations of REI, and"

11. The existing directors of Royal Executive Innds (*sic*) resigned on February 29, 1972 and five new directors were appointed. These new directors were Mr. Wencke, Mr. Mets, Mr. Potter, Mr. Lezak and Mr. Young.

12. Royal Executive Innds (*sic*) thereupon acquired all of the then outstanding stock of Sun Fruit, Ltd., a Nevada corporation, engaged in farming and farm land syndication.

13. On February 29, 1972, in a meeting of the new Board of Directors of Royal Executive Inns of America, after acquiring Sun Fruit, the advantages to Royal Executive Inns from that acquisition were pointed out as follows:

" 1. Net worth is increased from $1,307,994 to $5,113,662.

2. Current ratio is changed from (.62 to 1) to 1.39 to 1), or in dollars from $459,685 current assets and $743,798 current liabilities to $1,910,130 current assets and $1,372,198 current liabilities.

3. With the earnings of approximately $1,200,000 of SUN FRUIT, ROYAL should have significant earnings this forthcoming year.

4. The corporation would gain much needed diversification.

5. The corporation would now have growth potential.

6. Sun Fruit is in the glamorous grape industry which is enjoying a boom.

7. The increased net worth should enable the corporation to obtain satisfactory financing.

8. The company will eliminate its deficit retained earnings.

9. The company will have a capital in excess of par of $2,156,174.

10. The shareholders should experience a better market for their stock because of the absence of a loss in the company on a consolidated basis."

14. Meti Financial loaned Rinn in 1972 and 1973, the sum of $115,000. The note ws rewritten, including interests, on January 15, 1974 for $129,000.

15. A combination of the Meti Loan and the improved balance sheet enabled Royal Executive Inns to survive.

16. For the nine months period ending March 31, 1972, the Rinn Corporation audit was performed by certified public accountants, Grant, Dotson, Kellogg & Dees under date of May 24, 1972. For the 12 months period ending March 31, 1972, the Rinn Corporation audit was performed by certified public accountants, Kellogg & Dees under date of June 29, 1973. For the 12 months period ending March 31, 1974, the Sun Fruit, Ltd. (formerly the Rinn Corporation) audit was performed by certified public accounts, Kellogg & Dees, under date of August 15, 1974. A consolidated balance sheet of Sun Fruit, Ltd. and subsidiaries, formerly the Rinn Corporation and subsidiaries, was audited as of March 31, 1974, 1973 and 1972 respectively, by Kellogg & Dees, together with accompanying financial statements as of September 30, 1974 and 1973 (included for comparative purposes but unaudited) under date of October 15, 1974.

The independent CPA audits verified receivables, payable, contracts for sale, deeds, notes and trust deeds, appraisals and other items customarily verified by certified public accountants.

17. The audited pre tax farming and syncidating (*sic*) profits and the hotel losses of Sun Fruit were as follows:

	Farming & Syndication	Hotels
1972	$1,010,572 profit	$ 897,508 (loss)
1973	$ 782,673 profit	$ 237,944 (loss)
1974	$2,425,809 profit	$ 741,540 (loss)

18. It was disadvantageous for Sun Fruit shareholders and advantageous for Royal Executive Inn shareholders for Sun Fruit to become an asset of Royal Executive Inns on February 29, 1972.

Thereafter, it was advantageous for all stockholders of Sun Fruit, a Nevada corporation, to dispose of the hotel operations.

19. On July 1, 1972, the Rinn Corporaton (Sun Fruit) sold the Santa Barbara Motel to The Barbara Corporation, which in turn sold it to Familia 4, a corporation owned by Mr. Wencke's family. The minutes of the Directors' meeting recite relative to this transaction:

> "It was moved, seconded and carried that The Rinn Corporation sell the Santa Barbara Motel to The Barbara Corporation for the sum of $1,251,000 in the form of $1,000 cash and a 15-year Note, and the equipment for $111,582 in the form of a Five Year Note.
>
> "The effect of this sale is that (a) RINN will be rid of a money losing motel; (b) RINN will book a profit of $250,000; and (c) RINN's balance sheet will be improved by the removal of indebtedness of $761,984.
>
> "It was moved, seconded and carried that RINN manage the Motel for SEA HORSE INNS, INC. The Management Contract calls for an annual management fee of Seven (7%) Percent of gross volume. In addition, RINN will have the right to see to it that THE BARBARA CORPORATION pays the $1,250,000 and $111,582 Notes.
>
> "Walter Wencke abstained from both votes explaining that he was interested in the transaction."

20. Thereafter, on May 22, 1973, the $1,250,000 note and the $111,582 note were assigned to the Omaha National Bank as security.

21. The Santa Barbara Hotel, since that transaction, has consistently lost money.

In 1972 it lost ($ 53,186.00) (7/1/72 - 12/31/72)	Audited
In 1973 it lost ($113,709.00)	Audited
In 1974 it lost ($108,806.00)	Audited
In 1975 it lost ($119,047.00)	In House

22. Familia 4 and The Barbara Corporation are presently attempting to convey that property to Omaha National Bank.

23. Mr. Wencke has received no salary or other payment from the Santa Barbara property.

24. On March 19, 1974, Mr. Mets drafted an agreement for corporate reorganization which stated that the total equity for Sun Fruit and Wine Country and the hotels was $5,703,463. The equity of the farming and syncidation (*sic*) operations, etc. was $5,266,979 or 92.3%. The equity of the hotels was only $436,484 or 7.7%.

25. On April 29, 1974, in a Sun Fruit Directors' meeting:

> "Mr. Mets stated he was extremely irritated that the earnings of Sun Fruit were continuing to be diminished by the operation of the hotel divisions. He further felt that it was imperative that the unprofitable hotels be liquidated in order to stop any future losses.
>
> "Since July 1, 1971 to the fiscal year ending March 31, 1974, it is estimated that the hotel division lost in excess of $1,300,000 from operations of the hotels

> including any gain or loss from the sale of properties. The losses in Las Vegas totaled over $800,000 and St. Louis, over $400,000.
>
> "Mr. Mets stated that any funds would be better expended in the farming operations where there will be a greater and more certain return."

26. Prior to that meeting, Mr. Wood, a self-employed real estate broker, who previously had worked for Sun Fruit, was asked by Mr. Mets if he would form a corporation to buy the hotels. The directors then discussed the formation of Shaw Holding Company with Mr. Wood in order to insulate Sun Fruit from any possible future losses. Mr. Mets advised the directors that the following benefits would be had if the hotels were sold to Shaw Holding:

> "1. elimination of future operating losses;
> 2. elimination of significant indebtedness;
> 3. elimination of need for substantial new cash to upgrade the hotels;
> 4. elimination of headache of management of run down motels;
> 5. improved equity to debt ratio;
> 6. better current ratio;
> 7. a clean image of a profitable company instead of one that is profitable in part and tied to a loss in other parts;
> 8. better understandability of balance sheet by bankers, brokers, stockholders and potential limited partners in new Sun Fruit, or Sun Fruit subsidiary agricultural offerings;
> 9. because of all of the foregoing, the ability of the corporation to borrow money would be enhanced;"

27. The sale of the stock of the Rinn Corporation and the 17TH Corporation (which entities owned the stock of the various corporations operating the hotels) by Sun Fruit to Shaw Holding for the sum of $545,000 was thereupon approved. The consideration set

forth in the contract was the sum of $70,000 cash, $30,000 preferred stock of Shaw Holding and a 10 year note for $445,000. In addition, Shaw Holding acknowledged that the Rinn Corporation and 17TH Corporation assumed an obligation of $612,000 to the Omaha National Bank, and that the stock of the subsidiary corporations was pledged to Meti Financial to secure an obligation of $129,000. The owner of the common stock of Shaw Holding was Mr. Wood. Mr. Wood, at the time of the transaction, was not an employee of Sun Fruit or of any company in which Sun Fruit was involved.

28. Subsequently Shaw Holding did not meet its obligation on the note and it was in default. In April, 1975, Hawksfoot, Ltd purchased the defaulted notes issued by Shaw Holding and Warren Wood for $445,000 and $30,000 respectively from Wine Lands, Inc., the alter ego of Sun Fruit, for the sum of $522,258.56 in the form of a ten-year note with interest at the rate of 7-1/2% payable quarterly. That interest, as of December 31, 1975, was $29,377.05.

29. The obligation due to Rinns of Utah by Sun Fruit, which has been assigned to Hawksfoot, and which Hawksfoot claims as an offset, arose as follows:

30. Rinns of Utah, on January 23, 1974, through Meti Financial, purchased a non-negotiable promissory note from Albert Parvin & Company in the original face amount of $496,500 on which Sun Fruit (formerly Royal Executive Inns of America) was the maker. That original amount had been reduced to $288,562.50 at the time of purchase on January 23, 1974. Rinns of Utah purchased that note at the discount price of $245,000. Rinns of Utah then assigned it to Hawksfoot.

31. The set off of $282,566.67 (consisting of $245,000 + $37,566.67 interest as of December 31, 1975) which Hawksfoot has against Sun Fruit, is fair, just and equitable and is allowable against the initial payments on the note to Sun Fruit's alter ego and subsidiary, Wine

Lands, Inc., leaving a net obligation of $269,068.94 outstanding on the note to Wine Lands.

32. After the acquisition of the notes by Hawksfoot from Wine Lands, Hawksfoot entered into a contract with Shaw Holding Company which conveyed the stock of the hotel holding companies (the 17TH Corporation and the Rinn Corporation) to Hawksfoot in lieu of foreclosure.

33. The Rinn Corporation and other subsidiaries acquired by Hawksfoot from Wine Lands are indebted to Meti Financial in the principal sum of $10,000 unsecured, and $129,000, secured, plus accrued interest to December 31, 1975 of $26,891.27. The notes are delinquent. Walter Wencke is also a director of Meti Financial.

34. On the 10th day of April, 1974, Sun Fruit, Ltd. formed the Sundowner Corporation (under the name of EUCAL, amended July 17, 1975 changing the name to The Sounder Corporation). Sun Fruit owned all of the issued and outstanding stock of The Sundowner Corporation which had a lease on the premises at 99 Convention Center Drive, Las Vegas, Nevada, and did business under the name of Royal Las Vegas Hotel.

35. On April 1, 1975 Sun Fruit sold all of the stock of The Sundowner Corporation to Zippe, Ltd. for a seven year note in the amount of $34,000 with interest at the rate of 7-1/2%. The book equity of Sundowner at-the-time was $22,989.

36. On April 1, 1975, Zippe, Ltd. and Sun Fruit, Ltd. also entered into a contract for the equipment located at 99 Convention Center Drive, Las Vegas, Nevada, in the Royal Las Vegas Hotel. That

equipment was purchased for 123,035 shares of Sun Fruit stock and a note for $88,299.42. It was used equipment. It was also subject to a claim for a prior lien to the landlord of the building.

37. As of December 31, 1975 Zippe owed $122,299 to Sun Fruit but has an offset of $144,538 against Sun Fruit, leaving a net of $22,244 as an obligation of Sun Fruit to Zippe.

38. As of December 31, 1975 Hawksfoot owed $550,635.61 on a note to Wine Lands, Sun Fruit's alter ego, but had an offset of $282,566.67 against Sun Fruit against initial payments on the note leaving a total principal balance of $269,068.94.

CONCLUSIONS OF LAW

I.

SUN FRUIT, LTD. and its wholly owned subsidiary WINE LANDS, INC. have been alter egos of each other in dealings with HAWKSFOOT, LTD.

II.

As of December 31, 1975, ZIPPE owed $122,299 to SUN FRUIT but had an offset of $144,538 against SUN FRUIT, leaving a net of $22,244 as an obligation of SUN FRUIT to ZIPPE.

III.

As of December 31, 1975, HAWKSFOOT owed $551,635 on a note to WINE LANDS, SUN FRUIT's alter ego, but had an offset of $282,566.67 against SUN FRUIT against initial payments on the note leaving a total principal balance of $269,068.94.

ORDER

IT IS ORDERED THAT:

I.

As of December 31, 1975 ZIPPE has an offset of $144,538 against SUN FRUIT leaving a net of $22,244 as an obligation of SUN FRUIT to ZIPPE.

II.

As of December 31, 1975 HAWKSFOOT has an offset of $282,566.67 against initial payments on a note to WINE LANDS, INC., SUN FRUIT's alter ego, leaving a total principal balance of $269,068.94.

III.

This Order is stayed through March 28, 1976.

DATED this 26 day of March, 1976.

s/s

Michael J. Wendell, District Judge

s/s

MELVIN D. CLOSE, JR.
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